

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 663 of 1990

with

CRIMINAL MISC.APPLICATION No 712 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VALLABH BHANJI

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 663 of 1990
MR KJ SHETHNA for Petitioners
Mr. S.R. Divetia APP for Respondent No. 1
2. Criminal Misc.ApplicationNo 712 of 1993
MR KJ SHETHNA for Petitioners
Mr. S.R.Divetia APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

Date of decision: 22/04/97

ORAL JUDGEMENT(per: Pandya.J)

In all 42 accused were facing charge for the offence punishable under sections 302, 232,324,326,426 and 452 individually or read with section 149 as also for the offence under sections 143 and 144 all the sections being of I.P.C. The accused were variously armed. Accused no.1 was having a spear. Accused no.2 was having an axe, accused no.5 was having a Dharia. All the remaining accused had either iron pipes or sticks. The incident happened on 18.8.87 between 8.30 to 9.30 P.M.. at village Meshwan, Taluka Keshod, District Junagadh.

2. The prosecution case revolves on the love affair between a Rajput boy and a Patel girl. The accused assailants belong Patel community.

3. The learned Addl. Sessions Judge, Junagadh before whom the Sessions Case No. 128/87 was conducted, disbelieved the case of the prosecution against all the accused except 21 who were the original accused nos 1 to 6,8,10,11,13,14,17,18,19,22,23,24,27,33,40 and 41. All these convicted accused-appellants are before us in this appeal. The charge proved against them according to the learned Trial Judge is that of sections 147 and 149 as also under sections 302,232,324,426,427,452 read with section 149, all of IPC. The judgment of the learned Trial Judge is dated 22.6.90. The prosecution had examined several witnesses; 19 of whom were said to be eye witnesses. There are usual witnesses of medical faculty, police, panchas and other related witnesses including supporting witnesses numbering six.

4. So far as the incident is concerned, it is seriously disputed. What is disputed is the identity and involvement of the convicted appellants-accused. For this purpose obviously the testimony of the complainant Bhanabhai Valabhai eye witness no.1(p.w.4) exh.65 is very important. His deposition is starting from page no.887 of the paper book . As one goes through the same, one gets an indication that at about the time when the incident occurred, the electricity supply was disrupted and therefore, unless therefore artificial source of light, it was not possible to see the faces of the assailants.

5. The complainant with his wife and son was in the house for taking their evening meals. He heard shouts of some noise and therefore, taking the torch light with him

he proceeded towards the source of noise. There, he saw a crowd of 40 persons who were raising shouts and pelting stones . At the tethering room of deceased according to the complainant, he saw the assailants bringing down the deceased Deva Dhana and thereafter they gave blows to the deceased Deva Dhana and in the process he received serious injuries on account of which, he ultimately died. In his deposition he has stated that accused no.1 had given a spear blow, accused no.2 had given a stick blow , accused no.6 had given an axe blow , accused no.5 had given a dharia blow and accused no. 4 had given a pipe blow to the deceased.

6. When the medical evidence and the post mortem notes are considered, the fatal injury is to be found in the frontal region leading to depressed bone fracture, ultimately leading to the death of the deceased. The post mortem notes are to be found at exh.69 on page 869 of the paper book. Obviously, none of the injuries on the deceased can be said to have been caused by sharp cutting instrument. The weapon like spear, dharia and axe would therefore, go away. However, an attempt was made by the prosecution to put questions to Dr. Vinodrai who performed the post mortem examination to show that said injury in the frontal region could have been possible by the reverse portion of an axe. None of the witnesses has stated that reverse portion of the axe was ever used. The deposition of Dr. Vinodrai is at exh. 56 page 864 of the paper book.

7. As if this is not enough, the complainant thereafter proceeded further to narrate the incidents which have happened at different places in that very village and according to him, this very crowd of 40 people had amoved from one place to the other causing damage to each and every houses that they had come into contact. The appellants-accused of courses were members of Rajput community and that too for the reasons stated in the complaint that the marriage had taken place 7-8 months prior to the date of incident.

8. The prosecution is silent about any immediate provocation leading to the collection of about 40 persons belonging to Patel community and literally assaulting the houses of Rajput community. Apart from that apparently the boy and the girl had left the village and were residing at Keshod and were earning their livelihood. The lack of immediate provocation and any evidence in that regard is kept in mind and the consistent efforts on the part of the witnesses including the complainant to hopelessly exaggerate and improve upon the case as put in

their earlier version in the form of police statement recorded during investigation, it becomes clear that the witnesses are interested and are very much keen to see that as many of the accused before the Trial Court are convicted as could be made possible. However, like the said characteristic of consistent improvement and exaggeration, there is characteristic of not being without identity of any of the accused at the time of different incident including the incident relating to the deceased and the witnesses have not even identified the accused in the court room while deposing before the court and claiming that they had seen one or all the accused actually participating in the incident. This situation remains with regard to injured eye witnesses also. Coupled with this, we have to consider the evidence of the Investigating Officer Shri Chavda. He learnt from constable Bhikhubhai at about 2.15 a.m. in the night of the incident when Shri Chavda was residing in the Government Guest House. He went to the police station where he recorded the complaint of the complainant at 4.15 a.m. The complainant gave the names of only 6 persons and they are the first 6 accused persons and rest are referred to crowd of so many persons.

9. According to the complainant he was afraid of the accused and therefore, he left on foot and had taken a country road and tried to reach Keshod by short cut and in the process he got lost and finally he reached Keshod only at 4 a.m.

10. After the complaint was recorded, he left the police station and proceeded to reach Meshwan on his own by an ST bus. As against that PI Shri Chavda in the course of his deposition says that he carried the complainant with him in the Government vehicle in which he himself was travelling. The deposition of PI Shri Chavda is at exh.115 (page 1052 of the paper book)

11. Deposition of PI Shri Chavda makes an interesting reading. The impression created on reading his testimony is that the complainant was very much with him at the time when the panchnama of the scene of offence was drawn as also other investigative process had started. One can understand the anxiety of the Investigating Officer to send the injured witnesses for treatment and also to send the dead body for post mortem after drawing inquest panchnama. However, it is for the complainant to say that he came back to the village by boarding a bus and then he contacted the police. These two things, of course do not appeal.

12. As the improvement has been consistent in respect of all the witnesses and they are directed towards involving as many accused as possible, we have not referred to them in detail so far. However, it may be stated here that the complainant is the only witness who speaks of assault having been committed at 4 different places while the remaining e witnesses connected with each of these places have stated in respective of their respective incident. Nonetheless all through out as brought in the cross examination by drawing attention the respective witness their previous statement recorded by the police and additions and exaggerations are at a galore. They ultimately improved the story and make it appear that with the help of latern and torch light they could identify the accused. However, from the record of the Gujarat Electricity Board, it has been established that the electricity supply was disrupted. For this one may have a look at the deposition of p.w. 32 Pravinchandra, Deputy Executive Engineer of GEB exh. 141 (page 1036) and two letters brought through him on record at exhs. 142 and 143. It clearly establishes that at the time when the incident happened, the electricity supply had stopped.

13. Obviously therefore, in absence of electricity supply, the claim of the respective witness that they have seen the accused with the help of latern or torch light which again is nothing else but a later improvement by way of an after thought, cannot be entertained. The net result therefore is that all the prosecution witnesses who are eye witnesses have resorted to the aforesaid act of exaggeration and improvement and that circumstance clearly indicate that the witnesses could not have seen the incident in the manner now claimed.

14. Can any one say that when there was a crowd of about 40 persons behaving in an unruly manner pelting stones and making use of their weapons, who did what and as a result which injury was caused to whom ? For none of these questions, a definite answer could be given by the prosecution when voluminous is waded through. Obviously, as rightly submitted by Mr. Shethna, the prosecution has not been able to establish the case against the appellants beyond reasonable doubt.

15. So far as the application of section 149 IPC is concerned unfortunately the learned Judge has been led away by the fact that all the witnesses named before me have stated about the involvement of the accused whom he has been pleased to convict. However, mere reference to their presence will not leave the common object of

unlawful assembly. Further if the incidents have happened at four different places, in one of which, the person lost his life, only on that score, common object of unlawful assembly cannot be said to be established. Moreover, as indicated above when evidence as to immediate provocation is not there and when by way of corroboration said incident of inter caste marriage taking place about 8 months back is taken to be the foundation. Obviously so far as common object is concerned, same circumstance will prevail and therefore conviction based on taking recourse to section 149 IPC cannot be sustained.

16. In the circumstances the appeal succeeds. The accused are given benefit of doubt and they are acquitted. The order of conviction and sentence passed against the appellants accused is hereby quashed and set aside. Their bail bonds stand cancelled. Accused nos 1 to 5 are undergoing sentence and they are in custody. They be set at liberty forth with if they are not required in any other cases. bail bonds from the accused who are acquitted by this judgment, shall not be taken.

Misc. Cri.Application No. 712 of 1993 is disposed of by a separate order today.

(N.J.Pandya.J)

(S.D.Pandit.J)